



BANK OF BOSTON

R. Scott Sawyer
Associate Counsel

September 8, 1989

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

9-258A031

Interstate Commerce Commission
Room 2303
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

16520

RECORDATION NO. FILED 1423

Attention: Ms. Mildred Lee

RE: Railtex, Inc.

SEP 15 1989 -1 10 PM

INTERSTATE COMMERCE COMMISSION

Ladies and Gentlemen:

Enclosed for filing with the Interstate Commerce Commission (the "ICC") pursuant to Section 11303 of Title 49 of the U.S.C. are two executed and notarized originals of the document described below.

This document is a Security Agreement and Assignment (the "Security Agreement"), a primary document dated as of August 25, 1989 between The First National Bank of Boston and Railtex, Inc. (the "Company"). The Security Agreement includes the grant of a security interest by the Company, as debtor, in favor of the Bank, as secured party, in certain of the Company's rail cars and other properties and rights. A description of the rail cars covered by the security interest grant is attached as Schedule A to the Security Agreement.

The names and addresses of the parties to the Security Agreement (including the security provisions contained therein) are as follows: The Company (and the debtor under the security interest grant) is Railtex, Inc. whose chief executive office is located at 4901 Broadway, Suite 231, San Antonio, Texas 78209. The Bank (and the secured party under the security interest grant) is The First National Bank of Boston, whose head office is located at 100 Federal Street, Boston, Massachusetts 02110.

The property covered by the aforesaid security interest grant includes railroad cars intended for use, or which may be used, in interstate commerce, or interests therein, owned by the Company as of the date of the Security Agreement as described in Schedule A to the Security Agreement, together with all of the Company's interest in all contracts, leases and agreements related thereto and any additions, substitutions, replacements, accessions, proceeds and products of any of such property.



Interstate Commerce Commission

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September 8, 1989

A short summary of the Security Agreement to appear in the index is as follows:

"A Security Agreement and Assignment (the "Security Agreement") dated as of August 25, 1989 between The First National Bank of Boston (the "Bank"), and Railtex, Inc. (the "Company"), containing the grant of a security interest by the Company in favor of the Bank in certain assets and rights of the Company. A description of the rail cars covered by the security interest grant is attached as Schedule A to the Security Agreement."

Also enclosed is a check in the amount of \$13.00, payable to the ICC, to cover the recording fee for the Security Agreement.

Please acknowledge receipt of the enclosed documents by stamping and returning to the undersigned one of the Security Agreements, together with a duplicate copy of this letter, in the enclosed stamped, self-addressed envelope.

If you have any questions, please contact me at (617) 434-8638.

Very truly yours,

R. Scott Sawyer

Received: _____

Date: _____

Enclosures

RSS:1882

Interstate Commerce Commission
Washington, D.C. 20423

9/21/89

OFFICE OF THE SECRETARY

R. Scott Sawyer
Bank Of Boston
Boston. MA. 02106

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/15/89 at 1:10pm and assigned recordation number(s). 16520

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

SECURITY AGREEMENT AND ASSIGNMENT

dated as of August 25, 1989

16520
RECORDED BY _____ FILED 1423

Between

RAILTEX, INC.

SEP 15 1989 -1 10 PM

INTERSTATE COMMERCE COMMISSION

and

THE FIRST NATIONAL BANK OF BOSTON

AGREEMENT (the "Agreement") made as of this 25th day of August, 1989 by RAILTEX, INC. (the "Debtor"), a corporation duly organized and validly existing under the laws of the State of Texas with its chief executive office at 4901 Broadway, Suite 231, San Antonio, Texas 78209 in favor of THE FIRST NATIONAL BANK OF BOSTON (the "Bank"). All terms not otherwise defined herein shall be as defined in the Loan Agreement, as hereinafter defined.

For value received, the receipt of which is hereby acknowledged, including, without limitation, the enabling of the Debtor to obtain credit and other financial accommodations from the Bank under a certain Term Loan Agreement of even date herewith between the Debtor and the Bank (the "Loan Agreement"), and the other Loan Documents referred to therein, the Debtor hereby agrees for the benefit of the Bank as follows:

Section 1. Grant and Assignment. To secure the payment and performance of all obligations of the Debtor to the Bank of every kind and description, direct and indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising regardless of how they arise or by what agreement or instrument including, without limitation, any of the Loan Documents and under the South Carolina Loan Agreement, as hereinafter defined, and including obligations to perform acts and refrain from taking action as well as obligations to pay money (collectively, the "Obligations"), the Debtor hereby pledges and assigns to the Bank all of its right, title, and interest in, and grants to the Bank a continuing security interest in the rail cars listed on Exhibit A attached hereto (the "Rolling Stock"), together with all of the Debtor's interest in all contracts, leases and agreements related thereto (the "Contracts"), together with all goods, instruments, documents of title, policies and certificates of insurance, securities, chattel paper, deposits, cash or other property of the Debtor which are now or may at any time hereafter be in the possession of the Bank or its assigns for any purpose, and any proceeds thereof, whether now owned or existing or hereafter

acquired, unless otherwise stated, or arising, and including any and all additions, substitutions, replacements, accessions, proceeds and products of such property (collectively, the "Collateral"):

Section 2. Representations and Warranties. The Debtor represents and warrants that:

(a) it is a corporation (i) duly organized, existing and in good standing under the laws of the state of its incorporation and in good standing in every other state in which it is doing business, and (ii) the execution, delivery and performance hereof are within its corporate powers, have been duly authorized, and are not in contravention of the terms of its charter, by-laws or other incorporation papers;

(b) it is the legal and equitable owner of the Collateral and holds the same free and clear of all liens, charges, encumbrances, security interests and rights of others of every kind and nature whatsoever, except for any security interest granted to the Bank or any security interest or other lien as to which the Bank has heretofore consented in writing;

(c) it has good right and legal authority to assign, deliver, and/or create a security interest in the Collateral in the manner hereby provided or contemplated;

(d) the entering into of this Agreement has been duly authorized by all necessary action, corporate or otherwise, and does not and will not violate any applicable law or rule or regulation of any governmental agency, or any agreement, undertaking, instrument or order by which the Debtor, or any of its property, is bound or affected; and

(e) Exhibit B attached hereto is a complete listing of all Contracts, all of which are in full force and effect and are sufficient to enable the Debtor to operate the Rolling Stock in a manner represented to the Bank and as currently contemplated.

Section 3. Covenants. The Debtor covenants that:

(a) the Debtor shall not grant, assign or transfer any interest in, or otherwise encumber, any of the Collateral other than in favor of the Bank unless the Bank has previously consented thereto in writing;

(b) the Collateral shall remain personal property irrespective of the manner of its attachment to any real estate, and upon request by the Bank, the Debtor will

deliver to the Bank such disclaimer, waiver, or other document as the Bank may request, executed by each person having an interest in such real estate;

(c) the Debtor shall at all reasonable times allow the Bank to examine, inspect or make extracts from, or copies of, the Debtor's books and records and to inspect the Collateral under reasonable procedures;

(d) the Debtor will keep the Collateral insured at all times by such insurance as required by the Loan Agreement;

(e) the Debtor will keep the constituting Collateral in good order and repair and in any event in compliance with all applicable laws, regulations and industry standards and in such condition as to enable the Debtor to maintain the level of service to its customers as exists on the date hereof, and will not use the same in violation any policy of insurance thereon, and will pay promptly when due all taxes and assessments upon such equipment or for its use or operation;

(f) the Bank may discharge taxes and other encumbrances at any time levied or placed on the Collateral; make repairs thereon, or provide maintenance with respect to them, and place and pay for appropriate insurance thereon and pay any necessary filing fees; and the Debtor will reimburse the Bank, on demand for any and all expenditures so made, and, until paid, the amount thereof shall be an Obligation secured by the Collateral and shall bear interest at the rate of 18% per annum until paid, provided that the Bank shall have no obligation to the Debtor to make any such expenditures nor shall the making thereof relieve the Debtor of any default;

(g) the Debtor will pay on demand all costs of realizing upon the Collateral and reasonable attorneys' fees paid or incurred by the Bank in connection therewith;

(h) the Debtor will fully perform all of its obligations under the Contracts, will notify the Bank immediately upon a default or event of default thereunder and will provide to the Bank a true copy of any notice it receives or gives relating to a default or event of default under such Contracts;

(i) the Debtor shall not amend, modify or terminate any of the Contracts which would have a material and adverse effect on the Bank or the Collateral without the prior written consent of the Bank;

(j) the Debtor shall not change any serial numbers on any of the Rolling Stock, provided however that nothing herein shall be deemed to limit the right of the Debtor to remark any of the Rolling Stock so long as the information contained on Exhibit A remains true and correct; and

(k) the Debtor shall at all times do, make, execute and deliver all additional and further acts and instruments that the Bank may request at any time in connection with the administration and enforcement of this Agreement or relating to the Collateral or any part thereof or in order more completely to vest in and assure to the Bank or make available to it the property and rights herewith or hereafter granted, assigned or transferred to the Bank in the Collateral and to carry into effect the provisions and intent of this Agreement.

The Bank may make, adjust and settle claims under any insurance policy related to the Collateral and may take such action, including, without limitation, the execution and delivery of any instruments, documents and agreements in the name of the Debtor, as the Bank may deem necessary or desirable to protect the interests of the Bank in the Collateral and to carry out the purposes of this Agreement.

Except as otherwise provided herein, the Bank shall have no duty as to the collection or protection of the Collateral nor as to the preservation of any rights pertaining thereto.

Section 5. Set-off Rights. The Bank may at any time upon a Default, whether or not any Obligations are due, apply any and all deposits or other sums at any time credited by, or due from, the Bank to the Debtor and any other property and securities at any time in the possession or control of the Bank to the payment of, or set-off the same against, any Obligations regardless of the adequacy of any Collateral or any other security or sources of reimbursement for any Obligations.

Section 6. Defaults. An event of default ("Event of Default") shall exist hereunder if any of the following events or conditions occur:

(a) the occurrence of an "Event of Default" under the Loan Agreement or the South Carolina Loan Agreement;

(b) default in the payment or performance of any of the Obligations or under any agreement, instrument or other document evidencing the Obligations, including Obligations of the Debtor hereunder and under any of the other Loan Documents;

(c) failure of any representation or warranty herein, or of any representation or warranty, statement or information in any documents or financial statements delivered or disclosed to the Bank for the purpose of inducing it to enter into this Agreement or to extend or maintain credit to the Debtor to be true and correct;

(d) failure of the Debtor to furnish the Bank promptly on request with financial information about the condition or affairs of the Debtor or to permit the Bank to examine or inspect or make abstracts from the Debtor's books, records and properties;

(e) loss, theft, substantial damage to the extent that any of the foregoing is not fully insured by insurance required to be maintained by the Company hereunder and under the Loan Agreement, sale or encumbrance of or to the Collateral or the making of any levy thereon or seizure or attachment thereof, or the issuance of an injunction against the Debtor affecting any of its property, or the failure to pay when due any tax thereon which is not being contested in good faith, or with respect to any insurance policy (including any life insurance policy assigned to the Bank as collateral for the Obligations), the failure to pay any premium therefor; or

(f) default by the Debtor under any of the material Contracts or under any material instrument relating to any Collateral which has not been waived or cured within the time provided or termination of any material Contract.

Section 7. Remedies. In any jurisdiction where enforcement of its rights hereunder is sought, the Bank shall have, in addition to all other rights and remedies, the rights and remedies of a secured party (i) under the Uniform Commercial Code of Massachusetts and (ii) under the applicable laws of the States of Georgia, Alabama and Texas. Upon the occurrence of an Event of Default or at any time thereafter (such defaults not having been previously cured to the satisfaction of the Bank) and so long as any part of the Obligations remain unpaid or unperformed, the Bank may, without notice or demand, declare all of the Obligations to be immediately due and payable and take immediate possession of the Collateral, and for that purpose enter upon any premises on which any of the Collateral is situated and remove the same therefrom or remain on such premises and in possession of such Collateral for purposes of conducting a sale or enforcing its rights under this Agreement. The Debtor will, upon demand, make the Collateral available to the Bank at a place and time designated by the Bank which is reasonably convenient. After the occurrence of an Event of Default the Bank may collect and receive all payments, income and proceeds in respect of the Collateral, including, without limitation, under the Contracts and exercise all rights of the

Debtor with respect thereto and apply the same to any Obligations then outstanding. Any payments received by the Debtor following an Event of Default shall be held in trust for the benefit of the Bank and immediately turned over to the Bank in the same form received. Unless the Collateral threatens to decline speedily in value or is of the type customarily sold on a recognized market, the Bank shall give to the Debtor at least five days' prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sales or any other intended disposition thereof is to be made. From the proceeds of such sale the Bank shall be entitled to retain and to apply such proceeds first to payment of all expenses incurred by the Bank in connection with the exercise of the remedies contemplated herein, including attorneys' fees, second to the payment of all Obligations arising under the Loan Documents, and third to the payment of all other Obligations owed to the Bank.

Section 8. Waivers. The Debtor waives presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of any loans made, credit or other extensions granted, collateral received or delivered or any other action taken in reliance hereon, all demands and notices in connection with the delivery, acceptance, performance, default or enforcement of any note or other evidence of indebtedness secured by the Collateral and all other demands and notice of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other forgiveness or indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Bank may deem advisable. The Bank may exercise its rights with respect to the Collateral without resorting, or regard, to other collateral or sources of reimbursement for Obligations. The Bank shall not be deemed to have waived any of its rights upon or under the Obligations or the Collateral unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of, any right on any future occasion. All rights and remedies of the Bank in the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised separately or concurrently.

Section 9. Notices. Any demand upon or notice to the Debtor that the Bank may give shall be given in accordance with the provisions of Section 8.4 of the Loan Agreement.

Section 10. No Bank Obligations. Nothing herein shall be deemed to obligate the Bank to perform any term or condition of

any of the Contracts, and the Debtor shall indemnify and hold the Bank harmless from and against any and all losses, claims and liabilities arising from the assignment of the Contracts hereunder or the use or misuse of the Rolling Stock. Until there has occurred a Default, the Debtor shall have the right to collect any payments or proceeds relating to the Leases and to use and distribute the same so long as no violation of the Loan Documents would result therefrom.

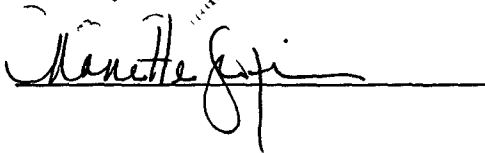
Section 11. General. This Agreement may not be amended or modified except by a writing signed by the Debtor and the Bank, nor may the Debtor assign any of its rights hereunder. This Agreement and the terms, covenants and conditions hereof shall be binding upon the Debtor's heirs, successors and assigns, and any executor, administrator or other legal representative of the Debtor, and shall inure to the benefit of the Bank and its successors and assigns; and shall be construed in accordance with, and governed by, the laws of The Commonwealth of Massachusetts. In the event that any Collateral or any deposit or other sum due from or credited by the Bank is held or stands in the name of the Debtor and another or others jointly, the Bank may deal with the same for all purposes as if it belonged to or stood in the name of the Debtor alone.

Section 12. Section Headings and Definitions. Section headings are for convenience of reference only and are not a part of this Agreement. Except as otherwise defined herein, all terms shall have the meanings ascribed to them by the Uniform Commercial Code of Massachusetts.

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be duly executed as an instrument under seal in three original counterparts as of the date first written above.

[Seal]

SIGNED IN THE PRESENCE OF



RAILTEX, INC.

By: 

Its: VICE PRESIDENT

THE FIRST NATIONAL BANK OF
BOSTON

By: 

Its: Vice President

STATE OF TEXAS

State of Texas)
County of Bexar)

On this 25th day of August, 1989, A.D., before me, a notary public, in and for such State of Texas, duly commissioned and sworn, personally appeared ROBERT R. LENDE, personally known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the VICE PRESIDENT of Railtex, Inc., a Texas corporation, and acknowledged to me that ROBERT R. LENDE executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

In witness whereof, I have hereunto set my name and affixed my official seal on the date of the certificate first written above.

Patti E. Paul
Notary Public
My Commission Expires: 10/2/90

[SEAL]

COMMONWEALTH OF MASSACHUSETTS

Commonwealth of Massachusetts)
County of Suffolk)

On this 7th day of September, 1989, before me, a notary public, in and for The Commonwealth of Massachusetts, duly commissioned and sworn, personally, appeared Michael J. Blake, personally known to me to be the Vice President of The First National Bank of Boston, a national banking association, the officer executing the within instrument pursuant to its by-laws and resolution of its directors and acknowledged to me that he subscribed his name on the within instrument.

In witness whereof, I have hereunto set my name and affixed my official seal on the date of the certificate first written above.

Caroline L. Flynn
Notary Public
My Commission Expires: 9/5/96

[SEAL]

EXHIBIT A

RAILTEX, INC.
LISTING OF 115 PULPMOOD CARS
A.A.R. CAR TYPE L026 AND L027
A.A.R. MECHANICAL DESIGNATION LP

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|------|-------|------|-------|------|-------|
| OSVR | 10225 | OSVR | 10366 | OSVR | 10456 |
| OSVR | 10226 | OSVR | 10367 | OSVR | 10457 |
| OSVR | 10227 | OSVR | 10368 | OSVR | 10458 |
| OSVR | 10228 | OSVR | 10369 | OSVR | 10459 |
| OSVR | 10229 | OSVR | 10370 | OSVR | 10460 |
| OSVR | 10230 | OSVR | 10371 | OSVR | 10461 |
| OSVR | 10231 | OSVR | 10372 | OSVR | 10462 |
| OSVR | 10232 | OSVR | 10373 | OSVR | 10463 |
| OSVR | 10233 | OSVR | 10374 | OSVR | 10464 |
| OSVR | 10234 | OSVR | 10375 | OSVR | 10510 |
| OSVR | 10235 | OSVR | 10376 | OSVR | 10511 |
| OSVR | 10236 | OSVR | 10377 | OSVR | 10512 |
| OSVR | 10237 | OSVR | 10378 | OSVR | 10513 |
| OSVR | 10238 | OSVR | 10379 | OSVR | 10514 |
| OSVR | 10239 | OSVR | 10380 | OSVR | 10515 |
| OSVR | 10240 | OSVR | 10381 | OSVR | 10516 |
| OSVR | 10241 | OSVR | 10382 | OSVR | 10517 |
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| OSVR | 10243 | OSVR | 10384 | OSVR | 10519 |
| OSVR | 10244 | OSVR | 10385 | OSVR | 10540 |
| OSVR | 10245 | OSVR | 10386 | OSVR | 10541 |
| OSVR | 10246 | OSVR | 10387 | OSVR | 10542 |
| OSVR | 10247 | OSVR | 10388 | OSVR | 10543 |
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| OSVR | 10251 | OSVR | 10392 | OSVR | 10560 |
| OSVR | 10252 | OSVR | 10393 | OSVR | 10561 |
| OSVR | 10253 | OSVR | 10420 | OSVR | 10562 |
| OSVR | 10254 | OSVR | 10421 | OSVR | 10634 |
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| OSVR | 10257 | OSVR | 10424 | OSVR | 10650 |
| OSVR | 10258 | OSVR | 10425 | OSVR | 10660 |
| OSVR | 10259 | OSVR | 10426 | OSVR | 10670 |
| OSVR | 10260 | OSVR | 10451 | | |
| OSVR | 10261 | OSVR | 10452 | | |
| OSVR | 10262 | OSVR | 10453 | | |
| OSVR | 10263 | OSVR | 10454 | | |
| OSVR | 10365 | OSVR | 10455 | | |

EXHIBIT B

RAILTEX, INC.

Contracts

None.